



POLICE DEPARTMENT

December 29, 2014

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Matthew Bourbeau
Tax Registry No. 929762
34 Precinct
Disciplinary Case No. 2013-11028

The above-named member of the Department appeared before me on May 28, 2014, charged with the following:

1. Said SGT Matthew Bourbeau, on or about September 30, 2012, at approximately 0045 hours, while assigned to the 34th Precinct and on duty, [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he stopped Sergio Mendez without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1 - STOP AND FRISK

2. Said SGT Matthew Bourbeau, on or about September 30, 2012, at approximately 0045 hours, while assigned to the 34th Precinct and on duty, in [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he participated in the frisk of Sergio Mendez without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 - STOP AND FRISK

3. Said SGT Matthew Bourbeau, on or about September 30, 2012, at approximately 0045 hours, while assigned to the 34th Precinct and on duty, in [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that he participated in the search of Sergio Mendez without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 3 - STOP AND FRISK

The Civilian Complaint Review Board (CCRB) was represented by Alan Alvarez, Esq., Respondent was represented by John D'Alessandro, Esq.

Respondent through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

Introduction

Respondent was assigned as a supervisor to the 34 Precinct Anti-Crime unit. Sergio Mendez was the manager of a restaurant on [REDACTED]. At approximate 12:45 a.m., on September 20, 2012, Mendez was allegedly stopped, frisked, and searched by Respondent and two additional officers without sufficient legal authority.

Mendez contends that he was in the middle of working his shift when he went outside in order to speak with the owner. He stated at some point he was approached by three individuals. Mendez initially thought he was being robbed. He further contends that he was handcuffed, assaulted, and searched. He later learned that the individuals were police officers.

Respondent contends he was approached by a female witness who stated that she observed a Hispanic man, in his early 20s, in possession of a firearm. Respondent and two other members of the Anti-Crime team returned to their vehicle and began

canvassing. Soon thereafter, they observed Mendez and believing he fit the description, stopped him.

Respondent further contends Mendez was noncompliant and one of the officers needed to use force in order to handcuff him but that Mendez was not searched by Respondent. After learning that Mendez was not the subject of their canvass, Mendez's handcuffs were removed and he was informed of the reason for the stop.

SUMMARY OF EVIDENCE PRESENTED

The CCRB's Case

CCRB called Sergio Mendez as a witness.

Sergio Mendez

Mendez worked as a manager at a restaurant located at [REDACTED]. At around 12:45 a.m., on September 20, 2012, he went outside the restaurant to speak with the restaurant's owner, Mr. [REDACTED]. Mendez indicated the exact location that conversation took place (See CCRB's Exhibit 1 [CCRBX 1], photograph of intersection of the stop with notations made by Mendez).

During their conversation, three individuals approached him, later determined through a CCRB investigation to be Respondent, Police Officer Bektashaj¹, and Police Officer Diaz². Bektashaj grabbed Mendez's hands and tried to bring them around his back. Mendez thought he was being robbed and he broke loose from the grip. Bektashaj

¹ Respondent in Case No. 2013-11030. Negotiated a penalty of 10 vacation days for, wrongful use of force in that said officer punched, kicked, and twisted Mendez's handcuffs without police necessity.

² Respondent in Case No. 2013-11032. Issued a Schedule "B" Command Discipline for failing to make activity log entries.

told him to place his hands on the vehicle and Mendez did not. Bektashaj went to grab his hand again, this time kicking out his right leg and knocking Mendez to the ground. He stated once he was on the ground he was handcuffed.

Mendez then testified that Bektashaj started "beating" him. Mendez was under the impression that he was being robbed and testified he spoke to the officers in a "loud voice." He asked, "Are you looking for money?" as Bektashaj began to "search" through his pockets. After the search Bektashaj informed Mendez he was a police officer and displayed his shield. At some point, he was placed in the rear of a black vehicle before being identified by a nearby security guard as a local restaurant's manager.

Mendez stated that at the time of the incident he was wearing black jeans and a polo shirt. Also, that he was carrying a "foldable toothbrush" and a "small breath spray" in his pants pocket. On questioning by the Court, Mendez stated that after the search, he was informed by the officers they were looking for a person with a weapon. Last, he agreed that Respondent did not physically grab, frisk, or search him during the course of the stop.

The Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent is a 12-year member of the Department. On September 30, 2012, prior to the stop of Mendez, Respondent was at the scene of a large dispute on the corner of [REDACTED]

As the crowd began to disperse, an unidentified female witness approached Respondent and informed him that she observed a Hispanic male, in his early 20s, in possession of a firearm. Soon thereafter, Respondent returned to his vehicle and began canvassing the area.

He could not recall if any further description was given or whether there was a direction of flight. He agreed that a full description of the male was given on the date of the incident, however, he could not recall it at the time of his CCRB interview. (See CCRBX 2, page 9 and 10 of transcript of CCRB interview, dated April 3, 2014).

On the [REDACTED] he stated that he observed a male, later identified as Mendez, fitting the description. It was about 1:00 a.m. in the morning and he stated that Mendez was going in and out of a mobile home parked on the street corner. They continued to observe Mendez for about 30 seconds from a distance of 20 feet before approaching him. He testified that his intentions were to talk to Mendez. On questioning from the court, Respondent stated that they identified themselves as police officers and that Respondent had his shield visible.

Upon approaching him, Respondent noticed that Mendez's hands were near his waistband. Bektashaj asked Mendez to show his hands. Mendez was not complying and tried to pull away. Respondent stated that Bektashaj had to use a "reasonable amount of force" to control the situation. Bektashaj grabbed Mendez's hands and subsequently handcuffed him.

Respondent stated Bektashaj gave Mendez a "pat-down" and did not recall Bektashaj searching him. At some point, a security guard from a local nightclub approached the scene and informed Respondent that Mendez was just a worker in a

nearby restaurant. Mendez's handcuffs were removed and he was informed of the reason for the stop. Respondent stated that they took down Mendez's personal information and prepared a Stop, Question, and Frisk form. (See CCRBX 3, copy of Stop, Question, and Frisk report, signed by Respondent).

FINDINGS AND ANALYSIS

Specification No. 1

Respondent is charged with abusing his authority as a member of the New York City Police Department, in that he stopped and participated in the frisk and search of Sergio Mendez without sufficient legal authority.

There came a point on September 20, 2012, when a female witness approached Respondent and informed him that she observed a Hispanic man, in his early 20s, with a firearm. This occurred at [REDACTED].

Respondent contends he got back in his vehicle and began canvassing. On the [REDACTED] he observed Mendez, fitting the description, coming in and out of a parked mobile home. Respondent observed Mendez for about 30 seconds from a distance of 20 feet before approaching him. Respondent stated he identified himself as a police officer and his shield was visible.

Mendez alleged he was standing outside of the mobile home speaking with his supervisor when he was grabbed from behind by Bektashaj. He was unaware they were police officers and thought he was the victim of a robbery.

The CCRB Attorney cited two cases, *People v. Dawkins*³ and *People v. Stewart*⁴. The issues in the *Dawkins* case dealt with whether the police had probable cause to arrest a suspect and if not, whether there should have been a subsequent suppression of physical evidence. In our case, the issue was whether Respondent had reasonable suspicion to stop Mendez. It appears the *Dawkins* holding is not applicable to our case because Respondent did not arrest Mendez, he only stopped him. Moreover, our record does not reflect whether there was an issue of evidence suppression like the court in *Dawkins*.

Additionally, we can distinguish our case from *Stewart* as well. The holding in *Stewart* was predicated on an anonymous phone tip. In our case, the witness availed herself to Respondent when she informed him, in-person, that she saw a Hispanic male, in his 20s, with a firearm. Courts in New York have routinely held that a face-to-face interview or an in-person tip from an anonymous informant is considered to be reliable since an experienced officer can assess the informant's trustworthiness from their appearance and demeanor. *People v. Castro*, 497 N.Y.S.2d 1 (App. Div. 1985); *People v. Sledge*, 640 N.Y.S.2d 117 (App. Div. 1996). The stop of Mendez occurred a mere 600 feet from the location that the description was given. It is doubtful much time had elapsed between the two events. Moreover, had Respondent suspected Mendez was the subject of his canvass he could have easily recovered the witness from the next block in order to conduct a show-up.

In light of the above facts, the stop of Mendez appears to be grounded in reasonable suspicion. It is also worth mentioning that CCRB never brought these specific

³ *People v. Dawkins*, 163 A.D.2d 322

⁴ *People v. Stewart*, 41 N.Y.2d 65

charges against Bektashaj⁵. Yet, from the record it appears undisputed that Bektashaj was the officer that actually physically stopped, frisked, and allegedly searched Mendez.

Accordingly, Respondent is found Not Guilty of Specification No. 1.

Specification No. 2

Respondent is charged with participating in the frisk of Mendez without sufficient legal authority. It is clear from the record that Respondent never physically participated in the frisk. Both Mendez and Respondent testified Bektashaj went to grab Mendez's hands, Mendez pulled away, and then Bektashaj handcuffed him. Logically, we can assume the next step Bektashaj took was to frisk Mendez. However, there was no evidence in the record that showed Respondent ordered the frisk of Mendez. It appears the entire scenario unfolded in a matter of moments and was controlled by Bektashaj.

Also taken into consideration was *Case No. 2013-9644* (April 3, 2014). In that case, Respondent, who was also a sergeant, was charged with participating in the frisk of a complainant. The sergeant from *Case No. 2013-9644* was at the scene when the frisk of the complainant occurred. However, like in our case, there was no evidence presented indicating that the sergeant physically participated in the frisk. Subsequently, the sergeant from *Case No. 2013-9644* was found Not Guilty of the charge because CCRB failed to show how his mere presence at the scene of a frisk was enough to sufficiently establish his participation in the frisk.

Notwithstanding, Respondent is a supervisor and his inaction may be grounds for failure to supervise, but, that charge was not proffered.

⁵ Respondent in *Case No. 2013-11030*. Negotiated a penalty of 10 vacation days for, wrongful use of force in that said officer punched, kicked, and twisted Mendez's handcuffs without police necessity.

Accordingly, Respondent is found Not Guilty of Specification No. 2.

Specification No. 3

Respondent is charged with participating in the search of Mendez without sufficient legal authority. Again, Respondent's mere presence at the scene is not enough to sufficiently establish his participation in the alleged search. Furthermore, I found Mendez lacked credibility as a witness. With respect to his testimony regarding the alleged police brutality, there was no corroborating evidence, medical records, or photographs supporting Mendez's accusations. Moreover, those allegations were not part of the charges brought against Respondent by CCRB or the Department. Thus, it was difficult to ascertain which portion of Mendez's testimony was true and accurate.

In light of the above facts, CCRB did not prove by a preponderance of the evidence that a search by Respondent did, in fact, occur.

Accordingly, Respondent is found Not Guilty of Specification No. 3.

Respectfully submitted,

R. Maldonado CDD

Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials

APPROVED

JAN 29 2015
William J. Bratton
WILLIAM J. BRATTON
POLICE COMMISSIONER